

1 Procedure were applicable, good cause would be required. No good cause is
2 demonstrated.

3 The reasons stated by Ms. Alexander consist of the following.

- 4 1) She is attempting to obtain legal counsel.
- 5 2) She has become ill.

6 There is an enormous difference between good faith and a reasonable basis or
7 good cause. The PDJ does not doubt that Ms. Alexander requests an extension of time in
8 good faith. Good faith has been defined by our courts as "honesty of purpose and
9 absence of intent to defraud." *Geomet Explorations, Ltd. v. Lucky Mc Uranium Corp.*, 124
10 Ariz. 55, 59, 601 P.2d 1339, 1343 (1979). A reason to exercise discretion requires
11 more than an honesty of purpose or the absence of intent to defraud.

12 Ms. Alexander knew long ago that her prior counsel would not be representing her
13 on any appeal in this matter. It was Ms. Alexander, not her prior attorney, who filed on
14 April 20, 2012 her Notice of Appeal. It was Ms. Alexander, not her prior counsel who
15 negotiated and filed an unopposed Motion to stay her suspension, agreeing to work
16 under a practice monitor. Under that agreement reached with Independent Bar Counsel
17 Ms. Alexander presumably continued to practice law. Ms. Alexander knew well in
18 advance the date her opening brief was due. This is not a case where Ms. Alexander did
19 not receive notice of the due date from the clerk. Ms. Alexander was notified by that
20 clerk on May 7, 2012 that her opening brief was required to be filed by June 6, 2012.

21 Additionally Ms. Alexander offers no support for her statements. Left unexplained
22 is why Ms. Alexander would wait until June 1, 2012 to file her six page Declaratory
23 Action in Superior Court attempting to obtain the counsel she apparently believes she
24 has needed since the middle of April, 2012. Left unexplained is why Ms. Alexander
25 would delay filing the six lines of her motion to extend time until at or past the time her
26 brief was due. These are troubling concerns that point towards delay, intentional or not,
27 rather than diligence. There are no unique or compelling circumstances given to explain
28 the delay in filing the request, nor is there reasonable cause given to extend the time.
While the PDJ is sympathetic for the physical plight Ms. Alexander states, such statement

1 is not sufficient. To the contrary, Ms. Alexander's delay in filing these pleadings hearken
2 in the same way to her conduct which the hearing panel found inexplicable.

3 There is neither need nor intent to dig up every ethical mistake of Ms. Alexander
4 which the record demonstrated and was found by the hearing panel. However, Ms.
5 Alexander is not aided by ignoring either the character weaknesses or faulty track record
6 which the hearing in this matter revealed. The purpose of the attorney discipline system
7 is the "(1) maintenance of the integrity of the profession in the eyes of the public, (2)
8 protection of the public from unethical or incompetent lawyers, and (3) deterrence of
9 other lawyers from engaging in illegal or unprofessional conduct." *In re Murray*, 159
Ariz. 280, 282, 767 P.2d 1, 3 (1988).

10 However it is also, to the extent possible, the intent of attorney discipline to aid in
11 the rehabilitation of an errant lawyer. *In re Hoover*, 155 Ariz. 192, 197, 745 P.2d 939,
12 944 (1987). At some point in time it is presumed Ms. Alexander will seek reinstatement.
13 At such time the burden will be upon Ms. Alexander to, among other things, establish by
14 clear and convincing evidence that she has identified the weaknesses that caused the
15 misconduct and demonstrate that she has overcome those weaknesses. *In re Arrotta*,
208 Ariz. 509, 513, ¶ 17, 96 P.3d 213, 217 (2004).

16 Ultimately, dodging the responsibility of one's disobedience serves no long term
17 purpose. Ms. Alexander drew airtight conclusions that were full of legal, factual and
18 ethical holes. For reinstatement, simplistic explanations must be replaced with realistic
19 reflection if the deeper things of ethics are to begin to emerge and eclipse shallow
20 rationalizations. It is hoped that these first hand observations of Ms. Alexander will aid
21 in that process.

- 22 1. Ms. Alexander knew the action or inaction of other lawyers would not change her
23 obligations under the ethical rules.

24 Q. All right. I want to ask you a couple of questions about your duties as a lawyer.
25 Can we agree that every lawyer admitted in Arizona has a unique and personal
26 responsibility to comply with the Rules of Professional Conduct?

27 **A. Yes.**

28 Q. And can we agree that the conduct of any other lawyer who may or may not be
directly associated with you, his or her conduct doesn't change the nature of your
obligation under the rules, does it?

A. That's correct.

Alexander Testimony, Hr'g Tr. 5:16-6:1, Oct. 19, 2011

- 1 2. Ms. Alexander met Andrew Thomas during his campaign, he personally hired her
2 to work directly for him as his special assistant, which she did in the Executive
3 Suite.

4 Q All right. Let me ask a little bit about your relationship with Andrew Thomas.
How did you first meet Mr. Thomas?

5 **A I believe I met him at a County Attorney primary debate where I was**
6 **on the panel, asking questions.**

7 Q And that was when he was running for County Attorney the first time?

8 **A Correct.**

9 Q So that would have been in 2004?

10 **A Yes.**

11 Q So shortly after he became County Attorney, he hired you?

12 **A Correct.**

13 Q And in what position were you hired?

14 **A He hired me on as a Deputy County Attorney/Special Assistant.**

15 Q I know. Tell me what that means, slash? I know what the Deputy County
16 Attorney means. What about the Special Assistant?

17 **A I would be helping out with a lot of things like policy projects for him.**

18 ---

19 Q All right. So in that capacity, you were working directly for Mr. Thomas?

20 **A Yes.**

21 *Alexander Testimony, Hr'g Tr. 7:16-8:11 and 8:16-18, Oct. 19, 2011*

- 22 3. Ms. Alexander was not directed to take over the RICO suit. Mr. Thomas asked if
23 she was willing to take it over in early December, 2009. Ms. Alexander failed to
24 tell him she had no trial experience.

25 Q All right. Now, tell me about the conversations you had with Mr. Thomas prior to
26 this e-mail of December 11th, 2009 regarding the racketeering case.

27 **A He asked me -- I don't know, a couple days -- a few days in advance if I**
28 **would be willing to take it over since he was concerned that there was --**
there might be a conflict with Lisa Aubuchon handling the case.

Alexander Testimony, Hr'g Tr. 24:14-20, Oct. 19, 2011

Q. And did you discuss with Ms. Alexander her qualifications to handle such a
matter?

A. Yes.

Q. And what was the discussion?

A. I talked to her about the matter, I told her that I realized that I had to
transfer the RICO case to another civil attorney from Lisa because of the
parallel proceedings issue. I wondered if she would be willing to assume
responsibility for it, I told her I thought it was important, I told her some
of the facts related to it, she was familiar with some of them.

Q. Did she respond?

1 **A. She responded positively, she wanted to know more about the case,**
2 **she responded positively initially.**

3 Q. And did she express any reluctance about handling a matter such as a federal
4 civil racketeering action against members of the Board of Supervisors, judges, and
5 attorneys?

6 **A. I don't remember reluctance regarding the identity of the defendants. I**
7 **do remember she had some just concerns about the heft of the case and**
8 **she thought she was up to it, ultimately.**

9 Q. When you assigned the matter to her, were you aware that Ms. Alexander had
10 absolutely no trial experience?

11 **A. No.**

12 Q. You did not know that?

13 **A. No.**

14 *Thomas Testimony, Hr'g Tr. 151:21-23, Oct. 26, 2011*

- 15 4. Mr. Thomas made Ms. Alexander no promises about obtaining help from outside
16 firms and Ms. Alexander knew Peter Spaw had no Federal RICO experience.

17 Q. Did you make any promises to Ms. Alexander about her obtaining help from
18 outside firms?

19 **A. No, not that I recall.**

20 *Thomas Testimony, Hr'g Tr. 153:23-25, Oct. 26, 2011*

21 Q. You now know, based on his testimony, that, in fact, he (Peter Spaw) had no
22 racketeering experience?

23 **A. My understanding is he has expertise in State criminal RICO law,**
24 **which is different from the Federal civil RICO law. So it doesn't correlate**
25 **exactly over, but it was, you know, the closest probably we had in the**
26 **office to an expert in that area.**

27 Q. Okay. But if you listened to his testimony, you'd know that he worked in the
28 forfeiture area. The forfeiture law just happened to, I guess, connect to the RICO
statute in some way, but he had never handled a Federal racketeering case.
You're now aware of that; correct?

A. I have been aware of that.

Q. Since his testimony?

A. No, I understood that -- that he was State criminal RICO law. I knew
that all along.

Q. All right. So if you -- so did you ask Mr. Thomas at the time that he told you
that Mr. Spaw was a RICO expert, "Wait a minute. I'm not sure Mr. Spaw is a
RICO expert." Did you ask him that?

A. No.

Alexander Testimony, Hr'g Tr. 31:2-25, Oct. 19, 2011

5. Ms. Alexander knew she was in charge of the case, independent of others.

1 Q. With your name appearing on the signature line on the pleading, your
2 understanding would be that the court would see you as the person in charge of
3 that case; is that true?

4 **A. I do understand that, yes.**

5 Q. And so at that point with your name on that case, would you consider yourself
6 to be the responsible party for that pleading?

7 **A. I do understand, yes, I'm responsible for that.**

8 Q. Did you understand that at the time?

9 **A. Yes, I did.**

10 *Alexander Testimony, Hr'g Tr. 67:13-24, Nov. 2, 2011*

- 11 6. In early January, Ms. Alexander still did not have the investigative file and went to
12 Mr. Thomas to find it.

13 Q. Do you recall at the end of December, early January, a teleconference with
14 you, Pete Spaw, Jeff Duvendack, and lawyers from Ogletree Deakins?

15 **A. Yes.**

16 Q. And do you remember -- tell us about the conversation; do you remember
17 someone suggested that the factual basis, the investigatory file needed to be
18 located?

19 **A. Yes, I do recall that.**

20 Q. How did you react?

21 **A. I was instructed by Pete Spaw to go find it and I said I would make an**
22 **effort to go find it.**

23 *Alexander Testimony, Hr'g Tr. 42:22-43:8, Nov. 2, 2011*

24 ---

25 Q. Now, there came a time when you made efforts to try to find all the file, the
26 factual support for the RICO matter; correct?

27 **A. Yes.**

28 Q. Would you tell us what you did?

A. I asked Andrew Thomas how I would go about getting that. I didn't
want to ask Lisa Aubuchon because at that point we, you know, cut
ourselves off from that other side, and so Andrew Thomas instructed me
to go talk to Sally Wells because she had, you know, all these files.

Alexander Testimony, Hr'g Tr. 46:22-47:7, Nov. 2, 2011

7. Ms. Alexander never personally saw any evidence supporting the allegations in the
RICO suit.

Q. In the complaint there are several items listed right up front, bribery, extortion,
hindering, obstruction of prosecution; this is in the amended complaint that you
signed. Did you find -- did you personally see evidence of bribery?

A: I would say I didn't personally see it, but I was relying upon the, you
know, firsthand testimony from experienced prosecutors in our office.

Q. Right, but I'm asking you as the person who signed the complaint, did you
actually physically ever see firsthand evidence of bribery?

A. Not me myself.

1 Q. Did you personally ever see firsthand evidence of extortion?

2 **A: Not me.**

3 Q. How about hindering?

4 **A. Not me.**

5 Q. And obstruction of prosecution, did you see any evidence personally of that?

6 **A. Again, I'm just going off the newspaper reports --**

7 Q. No, no, just you personally.

8 **A. Not me personally.**

9 *Alexander Testimony, Hr'g Tr. 68:18-69:14, Nov. 2, 2011*

- 10 8. Despite Peter Spaw, Jeff Duvendack and the lawyers from Ogletree, Deakins
11 discussing dismissing the RICO suit, Ms. Alexander would not dismiss the RICO
12 suit unless Mr. Thomas approved. Ms. Alexander was not ordered to do anything.

13 Q. And did someone during that call discuss the possibility of maybe dismissing
14 the complaint and starting over?

15 **A. I believe both Pete Spaw and Eric Dowell suggested dismissing the**
16 **complaint.**

17 ---

18 Q. What did you say?

19 **A. I said I believe we should discuss this with Andrew Thomas and, you**
20 **know, see if he's amenable to it and if he agrees, then, you know, I have**
21 **no problem with that.**

22 *Alexander Testimony, Hr'g Tr. 43:10-13 & 43:16-20, Nov. 2, 2011*

- 23 9. Neither Mr. Spaw nor Mr. Thomas directly or indirectly threatened Ms. Alexander.
24 No one prevented Ms. Alexander from withdrawing from the representation.

25 Q. Given the direction and supervision and input you were getting from Mr. Spaw,
26 it didn't dawn on you to go to Mr. Thomas and say let me off the case, did it?

27 **A. No.**

28 Q. At any time during your involvement with the racketeering case, did Mr. Spaw
threaten you?

A. No.

Q. At any time during your involvement in the racketeering case, did Mr. Thomas
threaten you?

A. No.

Q. At any time during your involvement with the racketeering case, was there a
situation in which you couldn't have just said I'm done and stopped working on
the case?

A. In the sense that I could just on my own tell Mr. Spaw and Mr. Thomas
I'm done, I could have; it wasn't a very good idea. I mean --

Q. You're a lawyer, Ms. Alexander. Could you have said no, I'm not going to work
on this case?

A. Yes.

Alexander Testimony, Hr'g Tr. 59:10-60:13, Nov. 2, 2011

1 10. Ms. Alexander knew the conduct of others, including her supervisors, had no
2 impact on her duties under the Rules of Professional Conduct

3 Q. Now, you've testified with regard to what you believe Mr. Thomas's conduct
4 was, what you believe Ms. Wells' conduct was, and what you believe Mr. Spaw's
5 conduct was in this case. Can we agree that their conduct has no impact on your
6 duties under the Rules of Professional Conduct?

7 **A. Yes.**

8 *Alexander Testimony, Hr'g Tr. 62:13-19, Nov. 2, 2011*

9 IN CONCLUSION

10 While the Motion to extend time to file the brief is denied, it is sincerely hoped Ms.
11 Alexander will reflect and begin to prepare for her reinstatement.

12 DATED 18th day of June, 2012,

13 William J. O'Neil

14 Honorable William J. O'Neil
15 Presiding Disciplinary Judge

16 ORIGINAL filed with the Disciplinary Clerk
17 this 18th day of June, 2012.

18 COPY of the foregoing mailed/emailed
19 this 19th day of June, 2012 to:

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By 